

a

**HONG LEONG FINANCE BERHAD**

v.

**STAGHORN SDN BHD**

COURT OF APPEAL, KUALA LUMPUR

DATO' N.H. CHAN JCA

b

DATUK DR. ZAKARIA BIN MOHD YATIM JCA

DATO' MAHADEV SHANKAR JCA

[CIVIL APPEAL NO. B-02-132-1995]

13 JULY 1995

c

**PRACTICE & PROCEDURE:** *Leave to intervene - Order 15 r. 6 RHC 1980 - Whether leave granted "at any stage of the proceedings" - Proceedings pertained to order for sale of land - Intervention order granted after issuance of certificate of sale by Registrar - Whether there was no stage of proceedings in existence - Whether r. 6(2)(b) complied with - Rules of the High Court 1980 Ords. 15 r. 6, 83 - National Land Code s. 259.*

**WORDS & PHRASES:** *"at any stage of the proceedings" - Order 15 r. 6(2)(b) RHC 1980.*

d

The appellant had applied by way of an originating summons for, and was granted, an order for sale of a piece of land under O. 83 Rules of the High Court 1980. The said land was later sold by public auction to the successful bidder and a certificate of sale under s. 259(3)(a) National Land Code was issued to the bidder by the High Court Registrar on 18 February 1992. On 4 December 1993, some 10 months after the issuance of the certificate, the respondent applied to the High Court for leave to intervene in the proceedings and leave was granted by the learned Judge on 30 January 1995.

e

Rule 6(2)(b) of Order 15 RHC 1980 provides that an order to intervene may be made by the Court "at any stage of the proceedings in any cause or matter". The appellant appealed against the High Court order aforesaid and before the Court of Appeal the sole issue that arose was whether there were any proceedings in existence in this originating summons on 30 January 1995, when the order for intervention was made, or, even on 4 December 1993 when the summons seeking intervention was issued.

f

**Held:****Per N.H. Chan JCA (delivering the judgment of the Court):**

g

The order of intervention herein had not been made "at any stage of the proceedings" as required by O. 15 r. 6(2)(b) Rules of the High Court 1980. The issuance of the certificate of sale under s. 259(3)(a) by the Registrar on 18 February 1992 constitutes the final stage of the proceedings for an order for sale in question and therefore, after that date, nothing further remained to be done in the proceedings. There were no proceedings in existence after that date and the Court thereafter would have no jurisdiction to make any order under O. 15 r. 6(2).

h

*[Appeal allowed. High Court order allowing respondent to intervene set aside]*

**[Bahasa Malaysia Translation of Headnotes]**

i

**AMALAN & PROSEDUR:** *Izin untuk mencelah - Aturan 15 k. 6 KMT 1980 - Samada izin diberikan "at any stage of the proceedings" - Prosiding berkaitan perintah untuk penjualan tanah - Perintah pencelahan diberikan selepas sijil penjualan dikeluarkan oleh Pendaftar - Samada tidak ada "stage of proceeding" yang wujud - Samada k. 6(2)(b) tidak dipatuhi - Kaedah-Kaedah Mahkamah Tinggi 1980 A. 15 k. 6, A. 83 - Kanun Tanah Negara s. 259.*

**PERKATAAN & ISTILAH:** "*at any stage of the proceedings*" - Aturan 15 k. 6(2)(b) KMT 1980. **a**

Perayu telah memohon melalui saman pemula untuk satu perintah penjualan tanah di bawah A. 83 Kaedah-Kaedah Mahkamah Tinggi 1980 di mana permohonan itu dibenarkan oleh Mahkamah. Tanah tersebut kemudiannya dijual kepada pembeli yang berjaya di satu lelongan awam, dan pada 18 Februari 1992 sijil penjualan tanah tersebut telah dikeluarkan kepada pembeli berkenaan oleh Pendaftar Mahkamah Tinggi di bawah s. 259 Kanun Tanah Negara. Pada 4 Disember 1993, lebih kurang 10 bulan selepas pengeluaran sijil di atas, responden memohon kepada Mahkamah Tinggi meminta izin untuk mencelah dalam prosiding saman pemula ini. Izin telah diberikan oleh yang arif Hakim pada 30 Januari 1995. **b**

Kaedah 6(2)(b) dalam A. 15 KMT 1980 memperuntukkan bahawa perintah untuk mencelah boleh dibuat oleh Mahkamah "*at any stage of the proceedings in any cause or matter*". Perayu merayu terhadap perintah Mahkamah Tinggi di atas dan di hadapan Mahkamah rayuan isu tunggal yang timbul ialah samada wujud apa-apa prosiding dalam saman pemula ini pada 30 Januari 1995, apabila perintah untuk mencelah dibuat, ataupun pada 4 Disember 1994, iaitu pada tarikh saman memohon pencelahan dikeluarkan. **c**

**Diputuskan:**

**Oleh N.H. Chan HMR (menyampaikan penghakiman Mahkamah):** **d**

Perintah pencelahan di sini tidak dibuat "*at any stage of the proceedings*" sebagaimana yang dikehendaki oleh A. 15 k. 6(2)(b) Kaedah-kaedah Mahkamah Tinggi 1980. Pengeluaran sijil penjualan oleh Pendaftar di bawah s. 259(3)(a) pada 18 Februari 1992 merupakan tahap terakhir bagi prosiding untuk perintah jualan berkenaan, dan oleh sebab itu, selepas tarikh tersebut, tidak ada apa-apa lagi yang perlu dilakukan dalam prosiding berkenaan. Tidak ada apa-apa prosiding wujud selepas tarikh itu dan Mahkamah dengan itu tidak mempunyai bidanguasa untuk membuat perintah di bawah A. 15 k. 6(2). **e**

*[Rayuan dibenarkan. Perintah Mahkamah Tinggi membenarkan responden mencelah diketepikan]*

**Case referred to:**

*The Duke of Buccleuch* [1892] 201 (*refd*) **f**

**Legislation referred to:**

National Land Code 1965, ss. 259(3)(a), 281

Rules of the High Court, O. 15, r. 6(2)(b), O. 83

*For the appellant* - Robert Lazar (*Jeyathini with him*); Shearn Delamore & Co

*For the respondent* - Yusuf Khan (*K.L. Wong with him*); K.L. Wong & Lim **g**

**JUDGMENT**

**N.H. Chan JCA:**

This is an appeal by Hong Leong Finance Berhad against the order of the Judge allowing the respondent Staghorn Sdn. Bhd. to intervene in the instant proceedings. The appellant had applied by originating summons for an order for sale of a piece of land under O. 83 of the Rules of the High Court based on a lien-holder's caveat under s. 281 of the National Land Code 1965. On 9 August 1991, the High Court granted the order for sale. **h**

On 16 November 1991, at a public auction, the land was sold to the successful bidder who paid the full purchase price for it. A certificate of sale was issued in accordance with s. 259(3)(a) of the Act on 18 February 1992 by the Registrar of the High Court. **i**

**a** On 4 December 1993, Staghorn filed an application for leave to intervene, and for an order to set aside the sale and the order for sale and for other consequential orders.

On 30 January 1995, the High Court granted to Staghorn leave to intervene and proceeded to hear the rest of the application. On 27 April 1995, the High Court granted Staghorn the substantive reliefs claimed. This appeal concerns the intervention order of 30 January 1995. The relevant parts of RHC, O. 15, r. 6(2)(b) read:

**b**

6.(2) At any stage of the proceedings in any cause or matter the Court may on such terms as it thinks just and either of its own motion or on application:

(b) order any of the following persons to be added as a party, namely:

**c**

(i) any person who ought to have been joined as a party or whose presence before the Court is necessary to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon, or

(ii) any person between whom and any party to the cause or matter there may exist a question or issue arising out of or relating to or connected with any relief or remedy claimed in the cause or matter which in the opinion of the Court it would be just and convenient to determine as between him and that party as well as between the parties to the cause or matter;

**d**

From the opening words of r. 6(2), it will be seen that the order to add, join or intervene in the proceedings can be made "At any stage of the proceedings in any cause or matter". The question for determination, therefore, is whether there were any proceedings in existence in this originating summons on 30 January 1995 when the order for intervention was made, or even on 4 December 1993 when the summons seeking intervention was issued.

**e**

In *The Duke of Buccleuch* [1892] p. 201, an application was made in an admiralty action to substitute the cargo owners for their agents as plaintiffs. The application was made after the trial under the then O. 16 (which was the predecessor of the present English O. 15 which is similar to our present O. 15), which by r. 11 of that order provided for the joinder of fresh parties "at any stage of the proceedings". There Fry LJ in upholding the Judge's decision to allow the substitution said, at p. 212:

**f**

I base my decision upon the words "at any stage of the proceedings". It has been argued that the rules do not apply after final judgment. They apply, in my opinion, as long as anything remains to be done in the case. In this case there remains the assessment of damages.

**g**

We are of the view that after 18 February 1992 when the certificate of sale was issued by the registrar of the High Court, nothing further remained to be done in the proceedings. There were no proceedings in existence after that date. The Court would have had no jurisdiction thereafter to make any order under O. 15, r. 6(2). The proceedings came to an end upon the issuance of the certificate of sale on 18 February 1992 and therefore the order for intervention which was made on 30 January 1995 or the summons for leave to intervene which was filed on 4 December 1993 had not been made or issued "at any stage of the proceedings" as required by O. 15 r. 6(2). This is because there was no stage of the proceedings in existence after 18 February 1992 as the issuance of the certificate of sale pursuant to s. 259(3)(a) of the National Land Code was the final stage of the proceedings for an order for sale under O. 83.

**h**

**i**

For the reasons which we have stated above, we have allowed the appeal with costs here and in the Court below. The order of the High Court granting leave to Staghorn to intervene in these proceedings dated 30 January 1995 is set aside.